

Readopt with amendment Ins 1100, effective 02-28-89 (Document #4583), as amended effective 07-01-93 (Document #5650), as amended effective 03-01-99 (Document #6953), to read as follows:

CHAPTER INS 1100 CONFIDENTIALITY OF HIV TESTS

Statutory Authority: RSA 400-A:15, RSA 417:4, XIX (f)

PART Ins 1101 PURPOSE AND SCOPE

Ins 1101.01 Purpose. The purpose of this chapter is to establish rules whereby all human immunodeficiency virus test results and records pertaining to such test results shall be maintained as confidential and be protected against inadvertent or unwarranted intrusion. This chapter shall also give effect to the charge given the insurance commissioner by RSA 417:4, XIX (f), which is to adopt rules relative to recordkeeping which rules shall be designed to maintain the confidentiality of an individual tested by an insurer or other person subject to this part and to prescribe rules relative to access to such records and the conditions of such access.

Ins 1101.02 Scope. This chapter shall apply to all insurers, their **producers [brokers and agents]** and any other person engaged in the business of insurance in this state who, in connection with an application for insurance, require an individual applying for insurance or for any increased or additional insurance benefits to be tested for an antibody or antigen to a human immunodeficiency virus.

PART Ins 1102 DEFINITIONS

Ins 1102.01 Definitions.

(a) "Antibody" means a protein produced by the body in response to specific foreign substances such as bacteria or viruses.

(b) "Antigen" means a substance that stimulates the production of antibodies.

(c) "Human Immunodeficiency Virus" (HIV) means the virus, or its variants, which are the causative agents of Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Conditions (ARC), and other clinical manifestations.

(d) "Insurer" means any entity included in or subject to Title XXXVII of the New Hampshire Revised Statutes Annotated. The term includes any health service corporation, and any health maintenance organization, as well as, the **[agents] producers** of any insurer, health service corporation, or health maintenance organization.

(e) "Medical Information Bureau (MIB)" means a membership association of insurance companies, or any similar entity, which acts as a clearinghouse for confidential data on insurance applicants.

(f) "Positive test result" means the presence in an individual, as detected by laboratory testing, of an antibody or antigen to the human immunodeficiency virus.

PART Ins 1103 MAINTAINING THE CONFIDENTIALITY OF AND PROTECTING THE PRIVACY OF HUMAN IMMUNODEFICIENCY VIRUS TEST RESULTS

Ins 1103.01 Informed Consent and Forms Pertaining Thereto.

(a) No insurer shall test any individual in connection with an application for insurance or for any increased or additional benefits for the presence of an antibody or antigen to a human immunodeficiency virus unless such individual gives written consent on a form created by the commissioner of health and human services and approved by the insurance commissioner pursuant to RSA 417:4, XIX (a).

(b) Insurers shall be informed of the approved consent form through a bulletin issued by the insurance commissioner. Insurers and others wishing to receive this bulletin may request the insurance commissioner to send a copy to them. A pre-addressed return envelope with the necessary postage paid shall accompany all such requests.

(c) Insurers shall not use any form other than the approved form for the purpose of obtaining written consent. Insurers may add their own name, address, logo and form number to the approved consent form.

Ins 1103.02 Confidentiality and Disclosure of Test Results.

(a) All information in the possession of or available to an insurer regarding the results of any test for the human immunodeficiency virus shall be maintained as confidential information and shall be protected against inadvertent or unwarranted intrusion. The insurer shall take all necessary measures to maintain and assure the confidentiality and privacy of an individual applicant's test results.

(b) Insurers shall establish written policies and procedures to govern the internal dissemination of test results among their officers, employees, and **[agents] producers**. These policies and procedures shall be designed to assure compliance with the duties imposed by (a) above. Such policies and procedures shall also be designed to assure that only those officers, employees, or **[agents] producers** of the company whose official duties establish a definite, operational need for information regarding test results shall have access to such information.

(c) With respect to positive test results, each insurer's policies and procedures established in order to comply with (b) above shall:

(1) State that laboratory reports shall be routinely received from the laboratory only by the company physician(s) and/or designated underwriting executive(s) retained or employed by the company;

(2) State that the company physician(s) and/or designated underwriting executives(s) authorized to initially receive the report shall designate who shall see each report on a strict "need-to-know" basis;

(3) State that each referral of a file shall be documented;

(4) Be distributed to all persons with access to positive test results:

a. Upon adoption of the policy; and

b. If an employee is hired after the date of adoption, at the time such employee is hired; and

(5) Contain a statement about specific penalties to be enforced for willful or negligent abuse of its requirements.

(d) Each insurer currently engaged in the business of life insurance or health insurance shall submit a copy of its written policies and/or procedures designed to safeguard the confidentiality of human immunodeficiency virus test results to the insurance commissioner for review. Filings **[should] shall** be made each time the insurer makes a change to such policies or procedures. Insurers authorized to do life or health insurance business but who are not currently engaged in either shall submit a statement to that effect.

(e) An insurer may disclose any test result, other than a positive test result, to its reinsurers, contractually retained medical personnel, laboratories and insurance affiliates. However, such disclosure shall only be made if, and to the extent that, it is necessary to the making of underwriting decisions

regarding the particular individual's application. Under no circumstances shall any such disclosure be made to the **[agents or brokers] producers** of the insurer.

(f) The insurer shall not submit positive test results to the MIB in any way that would identify a particular individual applicant as having had a positive test result for the human immunodeficiency virus. If an individual has a positive test result, the insurer may disclose to the MIB that the individual had an abnormal laboratory test, but shall not disclose the type of test, which was abnormal.

(g) Each insurer shall maintain data enabling it to report the number of New Hampshire applicants for insurance tested for antibodies or antigens to the human immunodeficiency virus and the number of such applicants denied insurance as a result of such test results. This information shall be made available to the insurance commissioner upon request.

(h) In the event of a positive test result, an insurer shall disclose the positive test result only to the individual tested or to such other person or entity as authorized in the approved consent form by the individual tested.

(i) Test result information obtained by subpoena or any other method of discovery shall not be released or made public outside of the proceedings for which the information was obtained.

Ins 1103.03 Penalties.

[(a)] Any insurer, producer [agent, broker] or any other person [who is subject to this part shall, after notice and hearing, in accordance with the procedures set forth in Ins 201-204 and RSA 400-A:17-24,] violating any of the provisions of this rule shall be subject to the [following] penalties [as] provided in RSA 400-A:15, III [:

(1) Have its certificate of authority or license suspended or revoked at the discretion of the commissioner; or

(2) Be subject to an administrative fine not to exceed \$2500 for each violation. Repeated violations of this part shall constitute separate finable offenses.

(b) These penalties shall be in addition to any other penalty otherwise provided by law].

Ins 1103. 04 Disclosure to the Department of Health and Human Services. Nothing in this rule shall be construed to prohibit physicians, laboratory officials, hospital officials or other health providers from reporting laboratory test results or other medical information on persons diagnosed with HIV and AIDS infection to the New Hampshire department of health and human services as provided under RSA 141-C:7.

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